

EXHIBIT 1



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Transcript of William C. Kelly

Date: August 20, 2019

Case: Russell, et al. -v- Educational Commission for Foreign Medical Graduates

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1 Volume I
2 Pages 1-224
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4 IN THE UNITED STATES DISTRICT COURT
5 FOR THE EASTERN DISTRICT OF PENNSYLVANIA
6

7 Case No. 2:18-cv-05629-JW
8

9 Hon. Joshua D. Wolson
10

11 MONIQUE RUSSELL, JASMINE RIGGINS
12

13 ELSA M. POWELL AND DESIRE EVANS,
14 Plaintiffs,
15

16 vs.
17

18 EDUCATIONAL COMMISSION FOR
19 FOREIGN MEDICAL GRADUATES
20

21 Defendant.
22

23

24 DEPOSITION OF WILLIAM C. KELLY
25

Tuesday, August 20, 2019 at 9:40 a.m.

Law Offices of Morgan, Lewis & Bockius, LLP

One Federal Street

Boston, Massachusetts 02110-176

26

27 -----Jennifer A. Doherty, CSR-----
28

29 Certified Shorthand Reporter
30

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1 meant.

2 A. Yes.

3 Q. And was step two basic clinical science
4 material?

5 A. Yes.

6 Q. And both were, at that time, two-day
7 multiple choice tests administered by ECFMG; is that
8 correct?

9 A. My -- that -- I have no independent
10 recollection of that. Just from what's on the form
11 the answer would be yes.

12 Q. So am I correct that in addition to
13 successfully -- again, I'm in this 1992 to 1996
14 period. Am I correct that in addition to pass --
15 successfully completing steps one and two of the
16 USLME exams an applicant would also -- an IMG
17 applicant would also have to pass an English test?

18 A. Yes.

19 Q. And in addition, before ECFMG would
20 certify an applicant there had to be primary source
21 verification of that applicant's medical
22 credentials; is that correct?

23 A. Of their medical diploma, yes.

24 Q. Nothing more than their diploma?

25 A. Generally not.

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1 Q. And am I correct also that in that same
2 time period in order -- I'm sorry, was -- in that
3 time period were steps one and two and was the
4 English exam administered by ECFMG?

5 A. To the best of my recollection, yes.

6 Q. Step three was not administered by ECFMG,
7 was it?

8 A. It was not.

9 Q. It was administered by whom?

10 A. My recollection was that it was
11 administered by state medical boards.

12 Q. And am I correct in saying that an IMG
13 applicant could not sit for step three of the USLME
14 unless he or she was certified by ECFMG?

15 MS. MCENROE: Objection to form.

16 A. I believe that was the process in most, if
17 not all states, yes.

18 BY MR. VETTORI:

19 Q. So again, this is just a general question,
20 Mr. Kelly. And again, we're referring to this time
21 period that I framed from 1992 through 2000. Let's
22 say through 1996.

23 Is it correct to say that an IMG couldn't
24 practice medicine in the United States without being
25 certified by ECFMG?

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1 MS. MCENROE: Objection to form.

2 A. That is not correct.

3 BY MR. VETTORI:

4 Q. How would they practice without a
5 certification from ECFMG?

6 A. My -- the best of my recollection is that
7 state licenses are granted by the individual state
8 medical boards and there were different pathways,
9 for example, the Fifth Pathway program for graduates
10 of medical schools in Mexico that were not required
11 to have ECFMG certificates.

12 Q. Are there any other countries where that
13 applied?

14 A. I don't recall.

15 Q. How about Nigeria? Did it apply to
16 graduates of medical schools in Nigeria?

17 A. I do not believe so.

18 Q. So with respect to graduates of Nigeria
19 medical schools in the time period we're talking
20 about, an IMG couldn't obtain a medical license in
21 the United States without being certified by ECFMG,
22 correct?

23 MS. MCENROE: Objection to form.

24 A. It would have been very, very unlikely,
25 yes.

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1 BY MR. VETTORI:

2 Q. Well, can you even sit for the -- at that
3 time period, could you even sit for step three exams
4 without being certified by ECFMG?

5 MS. MCENROE: Objection to form.

6 A. A graduate of a Nigerian medical school?

7 BY MR. VETTORI:

8 Q. Yes.

9 A. To best of my recollection, no.

10 Q. And in that same time period a graduate of
11 a Nigerian medical school wouldn't be permitted to
12 take -- wouldn't be licensed by any state in the
13 United States unless he or she successfully
14 completed step three of USMLE; isn't that correct?

15 MS. MCENROE: Objection to form.

16 A. If they were applying for an initial
17 license and had not passed the earlier licensing
18 examination, yes.

19 BY MR. VETTORI:

20 Q. So would you agree with me that ECFMG
21 works on behalf of domestic and international
22 regulatory authorities to protect the public for
23 which programs and services, including primary
24 source verification, of physician credentials?

25 MS. MCENROE: Objection.

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1 identification.)

2 MR. VETTORI: Off the record a
3 minute.

4 (Discussion off the record.)

5 A. I've reviewed this document, Exhibit 18.

6 BY MR. VETTORI:

7 Q. Have you seen these before or do you
8 recall seeing them before?

9 A. Yes, I do.

10 Q. As part of your preparation for this
11 deposition?

12 A. Yes.

13 Q. This page 1, 4007 -- 4007 appears to me to
14 be an ECFMG form; is that correct?

15 A. Yes.

16 Q. And if I understand from your prior
17 testimony, the practice would have been for ECFMG to
18 use this form to forward the diploma provided to it
19 by the applicant; is that correct?

20 A. That was the process, yes.

21 Q. And so I'm just going by the sequence of
22 numbers that they were produced to us. Immediately
23 following 4007 is page 4008 and it's a diploma,
24 correct?

25 A. Yes.

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1 Q. But it's not a diploma for somebody by the
2 name of Charles, is it?

3 MS. MCENROE: Objection to form.

4 A. It says Charles right on it.

5 BY MR. VETTORI:

6 Q. What is the last name?

7 A. It's Charles Oluwafemi Igberase.

8 Q. It's not Igberase Oluwafemi Charles, is
9 it?

10 MS. MCENROE: Objection to form.

11 A. The names are in a different order.

12 BY MR. VETTORI:

13 Q. Correct. And you were treating the person
14 with the name Igberase Oluwafemi Charles as someone
15 different from the person with the name Charles
16 Oluwafemi Igberase, weren't you?

17 MS. MCENROE: Objection to form. Are
18 you asking --

19 BY MR. VETTORI:

20 Q. When I say "you," I mean ECFMG for
21 purposes of its certification.

22 A. I don't recall that.

23 Q. Well, you assigned it a separate
24 identification number to Igberase Oluwafemi Charles
25 than you did to Charles Oluwafemi Igberase. We've

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1 already established that, Mr. Kelly.

2 MS. MCENROE: Objection to form.

3 BY MR. VETTORI:

4 Q. Isn't that correct?

5 A. If that is what we did, then this was a
6 different applicant, yes.

7 Q. Correct. Are you aware that this is the
8 identical diploma submitted by the person with the
9 name Charles Oluwafemi Igberase that you verified
10 with the school?

11 A. I'm not aware of that.

12 Q. So again, we have a situation where the
13 applicant's name is different than the name on the
14 diploma, correct?

15 MS. MCENROE: Objection.

16 A. The name -- the sequence of names is
17 different, yes.

18 BY MR. VETTORI:

19 Q. Correct. And is there any documentation
20 to indicate to ECFMG an explanation for that?

21 A. I see none.

22 Q. So as I -- is it correct to say that ECFMG
23 relied on a verification of a diploma for someone
24 whose name is different than the applicant Igberase
25 Oluwafemi Charles?

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1 MS. MCENROE: Objection to form.

2 A. What I can say is I, at this time in 1994,
3 I do not believe ECFMG considered them, the name not
4 to do -- to belong to this applicant. It was not
5 uncommon for people from different cultures and
6 certain countries to have their name, you know, in
7 different sequences.

8 BY MR. VETTORI:

9 Q. Then why did you apply -- I'm sorry. Why
10 did you assign different identification numbers to
11 these two people?

12 MS. MCENROE: Objection to form.

13 A. Yeah, you have me a little confused.

14 My -- I don't know. I don't have the two records in
15 front of me so I would have to see.

16 Q. I understand, but let me tell you what the
17 record that we developed here today shows. A
18 gentleman by the name of Charles Oluwafemi Igberase,
19 a name on a diploma, filed an application with ECFMG
20 in 1992 and you assigned -- ECFMG assigned to him
21 the 0482700-2 number. That's established in the
22 record.

23 A. Yes.

24 Q. A gentleman by the name of Igberase
25 Oluwafemi Charles applied to ECFMG in 1994 and ECFMG

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1 A. Yes.

2 Q. But again, do you remember any notices
3 other than the one I just referenced in your
4 review?

5 MS. MCENROE: Objection to form.

6 A. No, I don't recall.

7 BY MR. VETTORI:

8 Q. So let me ask it a little different way.
9 Did you review this December 19, 2016 letter that
10 Karen Corrada wrote?

11 A. No.

12 MS. MCENROE: Can you mark that or do
13 you want --

14 MR. VETTORI: I can, if you want me
15 to.

16 MS. MCENROE: Just for purpose of the
17 record of what it was he did not review.

18 (Exhibit No. 21 marked for
19 identification.)

20 (Exhibit No. 22 marked for
21 identification.)

22 BY MR. VETTORI:

23 Q. So Mr. Kelly, before you look at it I'm
24 telling you this is an incomplete document. This is
25 just page 1 of a multiple page document. Take a

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1 look at it for a moment and then I'm going to ask
2 you a question about it.

3 A. (Complies.) Okay.

4 Q. So this is dated March 1, 2017, and I
5 think we've already agreed that you weren't with
6 ECFMG at the time?

7 A. That's correct.

8 Q. So you don't know what information is
9 contained on the other pages of this document,
10 obviously?

11 A. That is correct.

12 Q. Have you even seen this document before?

13 A. No.

14 MR. VETTORI: Let's mark it as 23
15 anyway.

16 (Exhibit No. 23 marked for
17 identification.)

18 BY MR. VETTORI:

19 Q. So tell us what Exhibit 23 is.

20 A. It is a photocopy of an application for a
21 USMLE examination.

22 Q. By whom?

23 A. The name on the application is John Nosa
24 Akoda.

25 Q. A-K-O-D-A. It appears to me that it's

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1 dated January 3, 1996. Can you confirm that?

2 A. That appears to be the receipt date,
3 yes.

4 Q. Right. Does it list a Social Security
5 number?

6 A. There is none listed on there.

7 Q. What is the date of birth? Second page.

8 A. January 1, 1959.

9 Q. And does this applicant, John Nosa Akoda,
10 indicate what medical school he attended?

11 A. Yes.

12 Q. Which one?

13 A. University of Benin, Nigeria.

14 Q. Does he indicate when he graduated?

15 A. He does not list the degree date. He
16 lists his attendance dates.

17 Q. What are the attendance dates?

18 A. October '81 to October '87.

19 Q. If you look at Bates page 40705, which I
20 think is the third page of the application, part C.

21 A. Yes.

22 Q. There is a photograph attached or there is
23 a photograph on that page; is there not?

24 A. It appears to be a photograph.

25 Q. Isn't that a requirement of all

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1 applications, that they attach a photograph?

2 MS. MCENROE: Objection to form.

3 A. That is, yes.

4 BY MR. VETTORI:

5 Q. And doesn't that photograph have to be
6 verified by the dean of the medical school?

7 MS. MCENROE: Objection to form.

8 A. It does not have to be.

9 BY MR. VETTORI:

10 Q. What was the procedure in 1996 at ECFMG
11 with respect to the verification of a photograph on
12 an application?

13 A. I don't recall.

14 Q. So in section B1, down towards the bottom,
15 the form says, "Explain in the space below why the
16 application could not be signed in the presence of
17 your medical school dean, vice dean, or register --
18 any registrar. Any explanation must be acceptable
19 to ECFMG and must be provided each time you submit
20 an application to ECFMG."

21 Do you see that?

22 A. Yes.

23 Q. And the handwritten answer was "because
24 the postal system to Nigeria could not be guaranteed
25 within the available time." Did I read that

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1 memorandum was being written separately since I did
2 not think it should be made part of the official
3 file."

4 If not in the official file, where
5 was this document located?

6 A. I don't know.

7 Q. Okay. What was your thinking or purpose
8 in not including this within an official file on
9 behalf of Akoda?

10 MS. MCENROE: Objection to form.
11 Covered extensively by co-counsel.

12 A. Yeah, I don't know.

13 Q. What is the significance of a document
14 being inside the file versus outside the file?

15 MS. MCENROE: Objection to form.

16 Q. What are the criteria that would dictate
17 whether a document goes in an applicant file versus
18 outside a file?

19 MS. MCENROE: Objection to form.

20 A. I don't know.

21 Q. Presumably on December 22, 2000 there was
22 some purpose in not including this document within
23 Akoda's file, correct?

24 MS. MCENROE: Objection to form.

25 A. Or an intention not to include it. It

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1 obviously was included.

2 Q. Do you know if this was in fact within a
3 file on behalf of an official file for Akoda versus
4 kept somewhere else with ECFMG's records?

5 MS. MCENROE: Objection to form.

6 A. I don't know.

7 Q. Is there any justification that you can
8 think of as we sit here today as to why a document
9 concerning a physician's credibility and honesty
10 would not be included within their official file?

11 MS. MCENROE: Objection to form.

12 A. I don't know.

13 Q. You conclude that in the conclusion of
14 Paragraph No. 4 that you don't think this is enough
15 for the committee.

16 Help me understand in view of the
17 various documents previously discussed why you did
18 not believe that this was sufficient evidence to
19 even raise before a credentialing committee.

20 MS. MCENROE: Objection to form.

21 A. Based on experience and working with the
22 documents and presumably maybe talking with other
23 people that, you know, there was a staff had to
24 review all the materials that were part of the --
25 that were the result of the investigation, and part

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1 of it was a determination whether there was
2 enough -- we thought there was enough information
3 for the committee in its review to make an informed
4 decision.

5 Q. Were you ever part of any presentation to
6 the credentials committee regarding a Doctor John
7 Akoda?

8 A. I don't believe so.

9 Q. Mr. Kelly, after -- well, do you know
10 how -- we discussed previously the letters of
11 recommendation that were sent out or sent to you in
12 2006 or to ECFMG.

13 Do you have any understanding as to
14 how that concern that you articulated previously was
15 ultimately addressed? Was there any formal decision
16 that we should proceed with sending out these
17 materials on behalf of a Doctor Akoda?

18 MS. MCENROE: Objection to form.

19 A. Can you restate that?

20 Q. Sure. At what point was it determined
21 that despite some concerns regarding Akoda's
22 credentiality that ECFMG through the ERAS service
23 should proceed with sending out this material on
24 behalf of Akoda the individual to various residency
25 programs or a program?

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1 MS. MCENROE: Objection to form.

2 A. I don't know.

3 Q. You've not seen any documentation in the
4 file reflecting a decision one way or the other in
5 that regard?

6 A. I have not.

7 Q. You've not seen any correspondence to any
8 particular residency program regarding Akoda --
9 well, strike that -- with the exception of the ERAS
10 form that you previously alluded to?

11 A. That is correct.

12 Q. With respect to the levels of flags that
13 we discussed that concept generally, I understand
14 you might not have a recollection specifically of
15 what the different levels mean. This is Exhibit 52.

16 A. I have it.

17 Q. What is the general concern that is being
18 addressed through the use of flags on internal ECFMG
19 servicers with regard to who can see what?

20 MS. MCENROE: Objection to form.

21 A. Well, it's not just who can see what.
22 It's what you can do with the record, and that would
23 vary based upon the reason behind it.

24 Q. Certainly one of the purposes of the flags
25 in situations like in 2006 when someone went to

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1 C E R T I F I C A T E

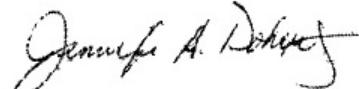
2 COMMONWEALTH OF MASSACHUSETTS
3 Worcester, ss.

4 I, Jennifer A. Doherty, Certified
5 Shorthand Reporter and Notary Public duly
6 commissioned and qualified in and for the
7 Commonwealth of Massachusetts, do hereby certify
8 that there came before me on the 20th day of August,
9 2019, the person hereinbefore named, who was by me
10 duly sworn to testify to the truth and nothing but
11 the truth of their knowledge touching and concerning
12 the matters in controversy in this cause; that they
13 were thereupon examined upon their oath, and their
14 examination reduced to typewriting under my
15 direction and that the deposition is a true record
16 of the testimony given by the deponent.

17 I further certify that I am neither
18 attorney nor counsel for, nor related to or employed
19 by, any of the parties to the action in which this
deposition is taken, and further that I am not a
relative or employee or financially interested in
this action.

20 IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY
21 HAND AND SEAL THIS 1ST DAY OF SEPTEMBER, 2019.

22
23
24
25



26 Notary Public
27 My Commission Expires:
28 October 19, 2023
29 CSR No. 1398F95